IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 100 OF 1990

M/s.Desa Hospital (ENT Section) ...Applicant
V/s.
The Commissioner of Income-tax,
Bombay City-II, Bombay. ...Respondent

Ms.Asifa Khan i/b. K.D. Bhujle for Applicant.
Mr.A.N. Kotangle, Senior Counsel with Mr.D.A. Dubey i/b. K.C. Sidhwa for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.

DATED : JULY 21, 2005.

P.C. :-

. By this reference under Section 256(1) of the Income-Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question of law for the opinion of this Court "-

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the appellant is not entitled to deduction of Rs.86,000/- under section 35(1)(ii) of the Income-Tax Act?"

2. Learned Advocate for the applicant-assessee fairly states that the question referred already stands answered by the Apex Court in view of Judgment of the Supreme Court in the case of **H.H.Sri Rama Verma V/s. Commissioner of Income-Tax, (1991) 187 ITR 308** wherein the Apex Court ruled that the deduction of the amount of donation paid does not qualify for deduction from total income unless donation is paid in terms of money. Donation given in kind does not qualify for deduction.

3. The facts of this case would reveal that the donation was given in kind i.e. by donating equipment worth Rs.86,000/-. Since the donation was in kind, the Tribunal rightly held that it did not qualify for deduction.

4. In this view of the matter, the question is answered in affirmative i.e. in favour of the Revenue and against the Assessee.

. Reference, accordingly, stands disposed of with no order as to costs.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**